



CONDYN

Confidentiality and Non-Disclosure Agreement

Between

CONNECTIVITY DYNAMICS (PTY) LTD T/A CONDYN

Registration Number: 1998/0007501/07

herein represented by *JORINA VAN RENSBURG* in her capacity as

MANAGING DIRECTOR

and

Registration Number _____

herein represented by _____ in his/her capacity as

WHEREBY THE PARTIES AGREE AS FOLLOWS :

1. **INTERPRETATION**

In this Agreement –

1.1 clause headings are for convenience and are not to be used in its interpretation;

1.2 unless the context indicates a contrary intention –

1.2.1 an expression which denotes –

1.2.1.1 any gender includes the other genders;

1.2.1.2 a natural person includes a juristic person and vice versa;

1.2.1.3 the singular includes the plural and vice versa;

1.3 the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

1.3.1 **“confidential information”** means, without limiting the generality of the term:

1.3.1.1 information relating to the disclosing party’s strategic objectives and planning for both its existing and future needs;

1.3.1.2 information relating to the disclosing party’s business activities, business relationships, products, services, customers and clients;

1.3.1.3 information contained in the disclosing party’s software and associated material documentation;

1.3.1.4 technical, scientific, commercial, financial and market information, know-how and trade secrets;

- 1.3.1.5 data concerning business relationships, architectural information, demonstrations, processes and machinery;
- 1.3.1.6 plans, designs, drawings, functional and technical requirements and specifications; and
- 1.3.1.7 information concerning faults or defects in the disclosing party's systems, hardware and / or software or the incidence of such faults or defects;

but excluding information or data which –

- 1.3.1.8 is lawfully in the public domain at the time of disclosure to the receiving party; or
- 1.3.1.9 subsequently becomes lawfully part of the public domain by publication or otherwise; or
- 1.3.1.10 is independently arrived at or developed by the receiving party separate and independent from the disclosure made by the disclosing party

provided that the onus shall at all times rest on the receiving party to establish that such information falls within the exceptions contained in clauses 1.3.1.8 to 1.3.1.10 and provided further that information disclosed in terms of this Agreement will not be deemed to be within the foregoing exceptions merely because such information is embraced by more general information in the public domain or in a party's possession. Any combination of features will not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in a party's possession, but only if the combination itself and its principle of operation are in the public domain or in a party's possession.

- 1.3.11 is disclosed by the receiving party to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the receiving party shall advise the disclosing party to take whatever steps it deems necessary to protect

the interest in this regard; provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances.

1.3.2 **“the disclosing party”** means any party who discloses information to the other party;

1.3.3 **“the parties”** means the parties to this Agreement;

1.3.4 **“the receiving party”** means any party who received or acquires the confidential information of any other party under any circumstances whatsoever.

1.4 Words and expressions defined in any clause shall, for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.

2. **RESTRICTIONS ON DISCLOSURE AND USE**

2.1 The parties agree, insofar as any party may be the receiving party–

2.1.1 not to disclose, publish, utilize, employ, exploit or in any manner whatsoever use the confidential information in any manner, for any reason or purpose whatsoever without the prior written consent of the disclosing party, which consent may be withheld in the sole and absolute discretion of the disclosing party;

2.1.2 they will restrict the dissemination of the confidential information to only those of their personnel who are actively involved in providing services for and on behalf of the other party, and then only on a “need to know” basis and they will initiate internal security procedures reasonably acceptable to each other to prevent unauthorized disclosure and will take all practical steps to impress upon those personnel who need to be given access to confidential information, the secret and confidential nature thereof;

2.1.3 that any unauthorized publication or other disclosure of the confidential information may cause irreparable loss, harm and

damage to the disclosing party. Accordingly, the receiving party hereby indemnifies and holds the disclosing party harmless against any loss, action, expense, claim, harm or damage of whatsoever nature suffered or sustained by the disclosing party pursuant to a breach by the receiving party of the provisions of this Agreement.

3. **TITLE**

All information disclosed by the disclosing party to the receiving party is acknowledged by the receiving party

3.1 to be proprietary to the disclosing party; and

3.2 not to confer any rights of whatsoever nature in such confidential information to the receiving party.

4. **STANDARD OF CARE**

The receiving party shall protect the confidential information of the disclosing party in the same manner and with the same endeavour, which a reasonable man would use to protect his own confidential information. Should the receiving party become aware of any unauthorized copying, disclosure or use of confidential information, it shall immediately notify the disclosing party thereof in writing and, without in any way detracting from the disclosing party's rights and remedies in terms of this Agreement, take such steps as may be necessary to prevent a recurrence thereof.

5. **RETURN OF INFORMATION**

5.1 The disclosing party may at any time request the receiving party to return any material containing, pertaining to, or relating to the confidential information and may, in addition, request the receiving party to furnish a written statement to the effect that upon such return, the receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material.

5.2 Alternatively to clause 5.1, the receiving party shall, at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that such material has been destroyed.

5.3 The receiving party shall comply with a request in terms of this clause 5 within 3 (three) days of receipt of such request.

6. **APPLICABLE LAW**

This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

7. **NOTICES AND DOMICILIUM**

7.1 The parties hereto select as their respective domicilia citandi et executandi the following physical addresses, and for the purposes of giving or sending any notice provided for or required hereunder, the following:

CONDYN at:

Ground Floor,
Lakeview Building,
Centurion, 0157

Tel: (012) 683 8816
email: jorina@condyn.net
and

(Company registered Name) _____ at:

(Address) _____

Tel: _____

Fax: _____

Email: _____

or such other address or telefax number as may be substituted by notice given as herein required.

7.2 Any notice addressed to a party at its physical or postal address shall be sent by prepaid registered post, or delivered by hand, or sent by telefax. Any notice shall be deemed to have been given:

7.2.1 if posted by prepaid registered post, 7 (Seven) days after the date of posting thereof;

7.2.2 if hand delivered, on the day of delivery;

7.2.3 if sent by telefax on the date of sending of such telefax, provided that such notice shall be confirmed either by hand or by prepaid registered post on the date of dispatch of such telefax, or, should no postal facilities be available on that date, on the next business day.

8. **WHOLE AGREEMENT**

8.1 This Agreement constitutes the whole of the Agreement between the parties relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties or their duly authorized representatives.

8.2 Subject to clause 8.1, the parties agree that no other terms or conditions, whether oral or written, and whether express or implied will apply hereto.

9. **WAIVER**

No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of any party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

10. **COSTS**

Each party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.

11. **VISITS**

In the event of one party visiting any of the facilities of the other party, the visiting party undertakes that any further information which may come to its knowledge as a result of any such visit, and any information relating to plant and equipment which may be seen as such facilities, in masses of operation thereof and the various applications thereof, shall be kept strictly confidential and that no such information will be divulged to any third party and will not be made use of in any way other than for the purposes contemplated in this Agreement, without the other party's prior written consent.

12. **DURATION**

This Agreement shall commence on the date of signature by the party signing last in time and shall continue indefinitely.

13. **NON – CIRCUMVENTION**

13.1 At any time prior to the expiration of three years from the date of this agreement, it is expressly agreed that the identities of any individual or entity and any other third parties (including, without limitation, suppliers, customers, financial sources, manufacturers and consultants) discussed and made available by the Disclosing Party in respect of the Purpose and any related business opportunity shall constitute Confidential Information and the Recipient or any Group company or associated entity or individual shall not (without the prior written consent of, or having entered into a commission agreement with, the Disclosing Party):

directly or indirectly initiate, solicit, negotiate, contract or enter into any business transactions, agreements or undertakings with any such third party identified or introduced by the Disclosing Party; or

seek to by-pass, compete, avoid or circumvent the Disclosing Party from any business opportunity that relates to the Purpose by utilising any Confidential Information or by otherwise exploiting or deriving any benefit from the Confidential Information.

13.2 The Recipient covenants that any financial gain made by it, or any associated party, from a breach of clause 13.1 shall be held on trust for the benefit of the Disclosing Party and then be transferred to a nominated account of the Disclosing Party, until which time such outstanding amount shall incur interest at the rate of 4% per annum above Standard Bank of South Africa Limited base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of

the overdue amount, whether before or after judgment and the Recipient shall pay the interest together with the overdue amount.

13.3 Clause 13.2 does not affect the Disclosing Party's ability to also sue for damages should the covenants in clause 13.1 be violated in any way.

SIGNED AT Centurion ON THIS _____ DAY OF _____ 20__

AS WITNESSES

- 1. _____
- 2. _____

for and on behalf of
CONDYN

Name: **JORINA VAN RENSBURG**

Capacity: **MANAGING DIRECTOR**
who warrants that she is duly
authorized by the company.

SIGNED AT _____ ON THIS _____ DAY OF _____ 20__

AS WITNESSES

- 1. _____
- 2. _____

for and on behalf of
(Authorized Signature)

Name: _____

Capacity: _____

who warrants that he/she is duly
authorized by the company.